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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re E. S. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LAURA C.,

Defendant and Appellant.

B189544

(Los Angeles County
Super. Ct. No. CK53599)

APPEAL from an order of the Superior Court of Los Angeles County,
D. Zeke Zeidler, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,
and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Laura P. (mother) appeals an order terminating her parental rights with respect to E. S. and Y. S. Mother contends a single attorney could not adequately represent the interests of all four of her children involved in this case. We conclude any error in failing to appoint separate counsel for E. S. and Y. S. was harmless and affirm the order. (*In re Celine R.* (2003) 31 Cal.4th 45, 61-62.)

FACTUAL AND PROCEDURAL BACKGROUND

This case involves four of mother's children, E. P., G. P., E. S. and Y. S.¹ The Department of Children and Family Services (the Department) filed a dependency petition on October 3, 2003, alleging failure to protect, emotional damage and failure to provide support. (Welf. & Inst. Code, § 300, subds. (b), (c) & (g).)² At the time of detention, E. P. was thirteen years old, G. P. was nine, E. S. was three and Y. S. was nine months old.

At the detention hearing on October 3, 2003, the juvenile court appointed one attorney to represent all four children and ordered the children detained in shelter care. Based on counsel's indication the children did not wish to be separated, the juvenile court ordered the Department to attempt to place the children together. However, the Department was unable to locate foster parents willing to care for all four children in one home due to the difference in their ages. The two older children, E. P. and G. P., were placed in separate foster homes and their two younger half-siblings, E. S. and Y. S., were placed in another foster home. Within the month, Department placed all four children in a duplex foster home operated by members of the A. family. E. P. and G. P. were placed in one unit of the duplex, and E. S. and Y. S. were placed in the other. The Department reported the children were doing well and E. S. was happy to see his big brother, E. P.

¹ Mother has two other children who are not involved in this case.

² Subsequent unspecified statutory references are to the Welfare and Institutions Code.

The social worker observed that E. S. cried when E. P. was out of his sight and clung to him.

On December 12, 2003, mother admitted the allegations of the dependency petition and the juvenile court ordered the Department to provide family reunification services.

On January 12, 2004, the A. family had an emergency that necessitated replacement of the children. The Department unsuccessfully searched for a home that would take all four of the children. E. P. was placed with his maternal aunt but was demonstrating behavioral and academic problems. Maternal aunt was unable to accept G. P. into her home due to his behavior, which include defiance, encopresis, temper tantrums, verbal aggression towards adults and physical aggression toward children. G. P. was receiving therapy twice per week and was placed in a “D” rate foster home. The Department reported G. P. has been replaced nine times since his detention, including multiple respite home placements. The two youngest children, E. S. and Y. S., were placed together in the care of Margarita S. and had adjusted well to the new placement. Mother enrolled in Victory Outreach on May 22, 2004, in San Diego County, where she was now residing. The Department reported the four children enjoyed weekly visits at the foster family agency.

On December 14, 2004, the juvenile court ordered therapeutic behavioral services (TBS) for G. P. and granted the Department discretion to replace the minors with any appropriate relative.

On February 24, 2005, the juvenile court granted an ex parte request for an expedited relative placement home study under the Interstate Compact on Placement of Children (ICPC) for E. S. and Y. S.’s paternal aunt, D. S., who resided in Texas and had expressed interest in adopting them.

On March 29, 2005, the juvenile court ordered the Department to attempt to place all four children together. If this was not possible, the Department was to attempt to place E. P. and G. P. together. The juvenile court set a permanency planning hearing for September 27, 2005.

A social report prepared for May 3, 2005, indicated D. S. had expressed concern at having all four children placed in her home because E. P. and G. P. were not related to her family. D. S. wanted to have E. P. and G. P. visit her in Texas before she decided whether she could care for all four children. The juvenile court ordered the Department to facilitate a visit with D. S.

A social report prepared for May 27, 2005, indicated the Department had made efforts to place all four children together and/or to place the two older children in the same home. However, there were no homes available for all four children and it was difficult to find a foster parent willing to work with G. P.'s needs and behaviors.

The juvenile court ordered the Department to continue efforts to place G. P. with E. P.

A social report prepared for June 29, 2005, indicated E. P.'s foster mother reported E. P.'s behavior in the home had been rebellious and disrespectful and she now found it difficult to continue working with E. P. The foster mother had given the Department a seven-day notice for E. P.'s removal. G. P.'s foster mother indicated she was afraid that if E. P. were placed with G. P., G. P.'s behavior would deteriorate. The caseworker suggested G. P. remain as placed until his behavior improved and he could transition from a D-rate home to a regular foster home. At that point, the Department could search for a home that would accept both children.

A social report prepared for July 21, 2005, indicated E. P. had been replaced and that G. P. remained with his foster mother. The Department had been unsuccessful in finding a foster home willing to take E. P. and G. P. because of their behavioral issues.

A social report prepared for September, 27, 2005, indicated D. S. remained interested in adopting E. S. and Y. S. and their adoption assessment had been approved. However, E. P. and G. P. told the caseworker they do not want to be adopted. The Department had arranged for all four children to visit D. S. in Texas from August 9 through 23, 2005. The children enjoyed their stay in Texas but E. P. continues to state he does not want to be adopted and does not want to live in Texas. G. P. was not interested in being adopted but expressed interest in living with D. S. D. S. indicated she is unable to care for all four children on a daily basis but was willing to have E. P. and G. P. visit in Texas and maintain contact with E. S. and Y. S. through letters and phone calls.

On September 27, 2005, the juvenile court ordered E. S. and Y. S. placed with D. S. in Texas and this was accomplished on November 18, 2005.

At a January 31, 2006 hearing, counsel for the children indicated G. P. continues to request that he be placed with E. P. Counsel indicated E. P. and G. P. “are okay with the younger sibling being adopted out of state by their aunt and uncle in Texas, but they’re also hoping to be able to visit with them during spring break.” The juvenile court set the matter for the contested termination of parental rights hearing on March 1, 2006.

A social report prepared for that date indicated E. S. and Y. S. were thriving in the home of D. S. D. S. reported willingness to have E. P. and G. P. visit but neither D. S. nor her husband had accumulated sufficient vacation time to permit a visit over the spring break of 2005. Both E. P. and G. P.’s foster mothers had given seven-day notice to remove the children from their homes due to behavioral issues. The Department attempted to place E. P. and G. P. together. However, the caseworker could not find a foster family agency or a D-rate home that would accept both children. To date, only group homes had vacancies for the siblings. E. P. and G. P. continued to state they do not wish to be adopted and wanted to return to mother.

On March 1, 2006, the juvenile court terminated mother's parental rights with respect to E. S. and Y. S., finding by clear and convincing evidence the children were likely to be adopted. The juvenile court also found by clear and convincing evidence that E. P. and G. P. were not adoptable, ordered them into long-term foster care and transferred their cases to the County of San Diego, where mother resides.

At the March 1 hearing, counsel for the children indicated the social worker intended to place E. P. and G. P. in a group home later that day. The juvenile court indicated it understood the Department would continue efforts to place the children together in a foster home but the success of that plan depended on their behavior in the group home.

CONTENTIONS

Mother contends the termination of her parental rights must be set aside because the juvenile court erroneously failed to appoint separate counsel to represent the two sibling groups.

DISCUSSION

1. *Any error in failing to appoint separate counsel for each of the two sibling groups was harmless.*

Mother contends an actual conflict of interest between E. P. and G. P., on the one hand, and E. S. and Y. S. on the other, became apparent in February of 2005, when D. S. expressed a desire to adopt E. S. and Y. S., but not E. P. and G. P. Mother argues the conflict became more obvious on September 27, 2005, when the Department recommended termination of parental rights for E. S. and Y. S. Mother asserts this recommendation put the two sibling groups on different permanency tracks and gave rise to an actual conflict of interest such that one attorney could not represent all four children. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 58; *Carroll v. Superior Court* (2002) 101 Cal.App.4th 1423, 1431.)

Mother argues it is reasonably probable the juvenile court would not have terminated her parental rights had separate counsel been appointed for the two sibling groups because separate counsel would have urged the juvenile court to consider the sibling relationship. (§ 366.26, subd. (c)(1)(E).)³ Mother claims separate counsel might have convinced the juvenile court not to terminate parental rights based on the strength and quality of the bond among the children and their desire to maintain a sibling relationship. Mother notes E. S. and Y. S. lived with their siblings and mother in the same home from birth until their detention in October of 2003, the children were bonded with each other and, shortly after their detention, all four children were placed in a duplex, insuring daily contact with each other. Mother concludes she was aggrieved by the juvenile court's failure to appoint separate counsel for the two sibling groups and the termination order must be reversed.

Assuming mother can raise this claim on appeal without having first raised it in the juvenile court (but see *In re Riva M.* (1991) 235 Cal.App.3d 403, 411-412), the claim fails on the merits. Given that E. P. and G. P. did not wish to be adopted and approved of the adoption of E. S. and Y. S., no actual conflict of interest appears. Absent an actual conflict of interest, the juvenile court had no obligation to appoint separate counsel for either sibling group. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 58.)

Further, even assuming an actual conflict of interest, mother is unable to demonstrate prejudice in the failure to appoint separate counsel. In order to avoid termination of parental rights with respect to a child that has been found to be adoptable,

³ The sibling relationship exception directs the juvenile court to consider whether “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same house, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(E).)

the juvenile court must find a “compelling reason for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1).) Otherwise, the juvenile court is required by law to terminate parental rights to permit E. S. and Y. S. to pursue adoption. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.)

Here, although adoption of E. S. and Y. S. will interfere with the weekly sibling visits the children have enjoyed during the pendency of this case, the record does not suggest the benefit derived from these visits outweighed the benefit E. S. and Y. S. would derive from a permanent adoptive home. E. S. and Y. S. were three years and nine months of age, respectively, at the time of their initial detention and thus cannot be said to have been raised with E. P. and G. P. in the same home. Although all four children were placed together in a duplex, this placement lasted only a few months. Additionally, there was no realistic expectation the children could live together within a reasonable amount of time. Indeed, given G. P.’s special needs and E. P. and G. P.’s behavioral problems, the Department had been unable to place E. P. and G. P. together anywhere except a group home. Thus, separate counsel could not successfully have argued that E. S. and Y. S. should forego the permanence of adoption in order to maintain their sibling relationship with E. P. and G. P. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 54; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952-953.)

Moreover, the record indicates the relationship between the siblings will continue after termination of parental rights in that D. S. was amenable to visits by E. P. and G. P. and was willing to continue contact with mother and the siblings by phone and mail. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1019.) Under the facts of this case, no different result would have obtained had separate counsel been appointed to represent either the older or the younger siblings. (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 61-62.)

DISPOSITION

The order terminating parental rights is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.